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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 26 2007
SRC 06 001 51032

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a controller. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. In a decision that did not discuss the specific documentation submitted in this matter, the director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits his own statement, evidence of a 1991 job offer and evidence that he has formed three companies. While more discussion of the documentation submitted is warranted and will be provided below, we uphold the director's ultimate conclusion that the petitioner has not established that a waiver of the alien employment certification is warranted in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Economics from Western Illinois University awarded in May 1991. The petitioner's initially proposed occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

On appeal, the petitioner implies that the nonspecific language quoted above and in the director's decision suggests that requests for a waiver of the alien employment certification are based on a subjective evaluation of the petitioner's plans, motivation and sincerity. On the contrary, however, *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 217-18 (Commr. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director did not contest that the petitioner works in an area of intrinsic merit, financing, and we find that he does. The director included a "national importance of the field discussion," which does not really address whether the petitioner has established that the *proposed* benefits of his work, job creation and an improved trade balance with Mexico, would be national in scope. NYSDOT noted the following examples of occupations where the proposed benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217 n.3. Similarly, the petitioner has not adequately explained how the petitioner's alleged ability to create jobs in Houston would provide a benefit that is national in scope. While we acknowledge that, at this point in our inquiry, only the proposed benefits are relevant, it would seem that the proposed benefits must be reasonably inferred from the alien's occupation. The unsupported statement from the petitioner's potential employer, Pine-O-Pine, LP, that the petitioner's employment as a controller will allow the company to reopen a plant in Houston that will "reduce the reliance on imports from Mexico by US$10.5 million per year for the next 3 years and by US$15.2 million every year after 2008" seems highly speculative.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Counsel attempted to address this issue in response to the director's request for additional evidence. Specifically, counsel asserted that the manufacturing problems in the United States can only be addressed by hiring the best qualified candidate, not simply a "minimally qualified candidate." It is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization or industries, such as controllers or any profession related to manufacturing. *Id.* at 217.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. While counsel referenced the petitioner's bilingual ability and knowledge of Hispanic culture, special or unusual knowledge or training does not inherently meet the national interest threshold. Counsel further asserted that the petitioner's prospective employer was seeking an alien employment certification in behalf of the petitioner based on a test of the labor market that failed to produce an able, willing, qualifying and available U.S. worker. As stated by the director, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof.

A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As evidence of his own accomplishments in the field, the petitioner submitted his self-serving curriculum vitae, his academic credentials, two letters from the Western Illinois University praising the petitioner's academic abilities, confirmation of his many years of work experience and formal recognition from his employer in 1994. With regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(B); *NYSDOT,* 22 I&N Dec. at 222. Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *NYSDOT,* 22 I&N Dec. at 222. The petitioner submitted no evidence regarding his influence in the field of finance, such as but not limited to letters from independent members of the field who have been influenced by him, news reports on his business accomplishments or evidence that he has authored influential articles in the field.

On appeal, the petitioner asserts that his passion for the United States sets him apart from other members of the field. The petitioner has not demonstrated that Congress intended the national interest waiver be granted for all advanced degree professionals who have developed a passion for the United States. The petitioner also notes that he has registered three sole proprietorships in 2004. While these businesses were registered prior to the date of filing, the petition was based on his proposed employment for Pine-O-Pine. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

Regardless, as stated above, the inclusion of the term "prospective" was used in *NYSDOT* to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *NYSDOT,* 22 I&N Dec. at 219. The petitioner has not established that he has a track record of success running his own company such that he has influenced the field to some degree. Moreover, we cannot conclude that an alien is entitled to a second preference employment-based visa based solely on vague plans as an entrepreneur when Congress has defined a fifth preference classification for alien entrepreneurs that requires an investment of at least $500,000 and, in most cases, a detailed business plan that demonstrates the likely creation of at least 10 direct jobs in two years. Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(2); 8 C.F.R. § 204.6.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than

on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.